belong to the prosecuting attorney for his compensation, *held,* that a suit against the prosecuting attorneys of the seventeen judicial districts of the state to restrain them from instituting any proceedings to recover penalties for refusal to comply with the act on the ground that it was unconstitutional, was in effect a suit against the state, within Const. U. S. Amend. 11, and therefore that the court was without jurisdiction. *Western Union Telegraph Co.* v. *Andrews et al.* (1907), — C. C., E. D., Ark., W. D. —, 154 Fed. Rep. 95.

The opinion states that "no action can be maintained against a state, when the state, though not named in the pleadings, is the real party against which relief is asked"; also, "the state is the real party when the relief sought is that which enures to it alone." The decision turns finally upon the point that the prosecuting attorneys collectively represent a client—the state, and that an attorney cannot be enjoined from bringing a suit when the court confessedly has no jurisdiction over his client. Where injunctions have been sought against state officers not acting as attorneys, the federal courts have generally held that the court had jurisdiction. A suit against the auditor general of a state to restrain him from acting under a statute alleged to be unconstitutional is not a suit against the state. *Western Union Telegraph Co.* v. *Henderson,* 68 Fed. 588. Nor is a suit against a state supervisor of registration to restrain him from carrying out the provisions of a state statute. *Mills* v. *Green,* 67 Fed. 818. The federal courts have jurisdiction to enjoin state officers from obeying state laws declared to be unconstitutional. *Claybrook* v. *City of Owensboro,* 16 Fed. 297. The United States Supreme Court has held that the prohibition to sue a state does not extend to a case in which the state is not a party on the record even if the state is alone interested in the subject of the suit. *Osborn* v. *Bank of United States,* 22 U. S. (9 Wheat.) 738, 6 L. Ed. 204. A suit against the Bank of the Commonwealth of Kentucky was not a suit in which a state was a party even though it be sole proprietor of the stock of the bank. *Bank of Kentucky* v. *Wister,* 27 U. S. (2 Pet.) 318. A suit by or against a governor of a state in his official character as such, is a suit against the state. *Kentucky* v. *Dennison,* 65 U. S. (24 How.) 66. A suit against railroad commissioners of a state to restrain them from enforcing their regulations as unjust and unreasonable, the state having no direct pecuniary interest therein, is not a suit against a state. *Reagan* v. *Farmers' Loan and Trust Co.,* 154 U. S. 362. The weight of authority seems to be against the ruling in the principal case. A determination of the entire question involved is expected in the final disposition of the North Carolina railway cases.

FOREIGN CORPORATIONS—LIABILITY TO BE SUED.—Plaintiff, a resident policyholder of a foreign insurance company, sues for his share of the surplus profits. Defendant insurance company had a capital stock and stockholders. A plea to jurisdiction was filed. *Held,* plaintiff, being a creditor and not a member, could sue. *Peters* v. *Equitable Life Assur. Soc.* (1907), — Mass. —, 81 N. E. Rep. 964.

The decision rests on the well-known principle that courts do not take jurisdiction where plaintiff seeks to sue a foreign corporation in his right as

a member, or where the suit concerns the internal management of a foreign corporation. In addition to the cases cited in the opinion, see *Taylor* v. *Mutual, etc., Life Ass'n.*, 97 Va. 60, 33 S. E. 385; *North State, etc., Mining Co.* v. *Field*, 64 Md. 151, 20 Atl. 1039; *Gregory* v. *N. Y., L. E. & W. R. Co.*, 40 N. J. Eq. 38; *Madden* v. *Penn. Elec. Light Co.*, 199 Pa. 454, 49 A. 296; *McCloskey* v. *Snowden*, 212 Pa. 249, 61 A. 796; *Howard* v. *Mutual, etc., Life Ass'n.*, 125 N. C. 49, 34 S. E. 199. Courts do not always hold strictly to this rule when they can enforce their decrees. THOMPSON ON CORPORATIONS, Vol. 6, § 8011; *Moore* v. *Silver Valley Min. Co.*, 104 N. C. 534, 10 S. E. 679; *State* v. *No. Amer., etc., Co.*, 106 La. 621, 31 So. 172; *Fisk* v. *Chi. R. I. & P. R. Co.*, 53 Barb. 513. Compare *Richardson* v. *Clinton, etc., Mfg. Co.*, 181 Mass. 580. The courts of New York, under a broad statute, § 1780, Code of Civil Proc., go farther than most courts. See *Prouty* v. *Railroad Co.*, 1 Hun 655; *Ives* v. *Smith*, 3 N. Y. Supp. 645. The decision emphasizes the advantage, in the matter of bringing suit, which a policy holder of a stock company has over the policy holder in a mutual company.

HOMICIDE—SELF-DEFENSE—PROVOKING DIFFICULTY.—In a trial for homicide the court instructed the jury that the defendant must be free from fault in provoking the difficulty to invoke the plea of self-defense. *Held*, that the instruction was correct. *Bluett* v. *State* (1907), — Ala. —, 44 S. Rep. 84.

It is generally held by the courts of this country that one who begins a difficulty and then in good faith withdraws may set up self-defense if the other party returns and attacks him so that it is necessary to kill. *Stoffer* v. *State*, 15 Ohio St. Rep. 47, 86 Am. Dec. 470; *Parker* v. *State*, 88 Ala. 4; *People* v. *Miller*, 125 Cal. 44, 57 Pac. 770; *State* v. *Neeley*, 20 Iowa, 109; *People* v. *Hite*, 8 Utah, 461; *Frank* v. *State*, 94 Wis. 211. But, in the principal case, the question of retreat or withdrawal was not raised, and the court lays down the general rule as above given. The decision is undoubtedly with the weight of authority. CLARK'S CRIMINAL LAW, p. 183, and cases cited; 45 L. R. A. 687, note; *State* v. *Brown*, 64 Mo. 367; *Kinney* v. *State*, 108 Ill. 519; *State* v. *Perigo*, 70 Iowa, 657; *State* v. *Hawkins*, 18 Ore. 476. See also AM.-ENG. ENCY. OF LAW, Vol. 25, p. 266, and cases cited. All of these cases, however, depended very largely on peculiar circumstances, and they scarcely state the rule as broadly as the principal case. On the other hand, many decisions are to be found which are in conflict with the principal case and which do not absolutely deprive the defendant of pleading self-defense, although partially at fault in provoking the difficulty. *People* v. *Conkling*, 111 Cal. 616, 44 Pac. 314; *Sams* v. *State*, 52 S. E. 18, 124 Ga. 25; *Pulpus* v. *State*, 82 Miss. 548, 34 So. Rep. 2; *State* v. *Foutch*, 95 Tenn. 711, 45 L. R. A. 687, 34 S. W. 423; *State* v. *Adler*, 146 Mo. 18, 47 S. W. 794; *Hash* v. *Commonwealth*, 88 Va. 172, 13 S. E. 398. On the whole, the tendency of the latest decisions seems to be away from the stringent rule laid down in the principal case.

INSURANCE—CERTIFICATE SILENT AS TO SUICIDE.—Insured held a certificate, silent as to suicide, in a mutual benefit association. *Held*, beneficiary could not recover for death of insured by his own hand while of sound mind.—